

REMARKS

The Examiner is thanked for the due consideration given the application. This amendment is being filed concurrent with a Request for Continued Examination.

Claims 21-28, 36 and 41 are pending in the application. Claims 29-35, and 37-40 are canceled by this amendment. The independent claims of the present invention have been amended to set forth that the emerging crystallized calcium phosphate is resorbable after implantation to insure an efficient biocompatibility in terms of biological acceptance. Method claim 28 has also been amended to set forth process steps from the instantly canceled claims.

No new matter is believed to be added to the application by this Amendment.

Statement of Substance of Interview

The Examiner is thanked for graciously conducting an interview with the applicant's representative on August 27, 2009. During the interview the patentability of the present invention over the applied art references was discussed, particularly the failure of these references to teach emerging crystallized calcium phosphate being resorbable after implantation.

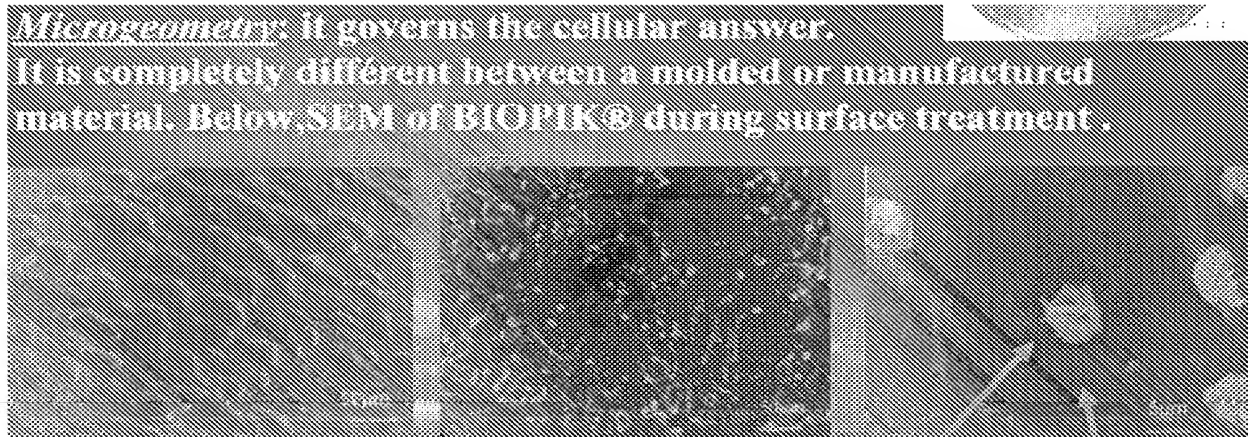
At the end of the interview the Examiner prepared an interview summary. The interview summary has been reviewed, and it appears to accurately reflect the substance of the interview.

Rejections Based on COUGOULIC

Claims 21-24, 26, 27, 39 and 40 remain rejected under 35 USC §102(b) as being anticipated by COUGOULIC (U.S. Patent 5,872,159). Claim 25 remains rejected under 35 USC §103(a) as being unpatentable over COUGOULIC in view of ELLINGSEN et al. (U.S. Publication 2002/0111694). Claims 28-38 remain rejected under 35 USC §103(a) as being unpatentable over COUGOULIC in view of MILLS et al. (U.S. Patent 6,482,584). Claim 41 has been rejected under 35 USC §103(a) as being unpatentable over COUGOULIC in view of MILLS et al.

These rejections are respectfully traversed.

The present invention pertains to a material for medical or veterinary usage that is formed from calcium phosphate and polymer biocompatible binder. The surface of this material is provided with emerging crystallized calcium phosphate. The emerging crystallized calcium phosphate can be seen in the photomicrograph reproduced below.



Emerging crystallized
calcium phosphate

Binder

This emerging crystallized calcium phosphate is resorbable after implantation to insure an efficient biocompatibility in terms of biological acceptance. The independent claims of the present invention clearly set forth this aspect, reciting, for example: *"said material having a surface provided with emerging crystallized calcium phosphate, the emerging crystallized calcium phosphate being resorbable after implantation to insure an efficient biocompatibility in terms of biological acceptance."*

Distinctions of the present invention over the applied art references (including rebuttal evidence in a Declaration) have been made of record in the application which, for brevity, are not repeated here.

In the Response to Arguments it is argued that the material of COUGOULIC would inherently provide emerging crystallized calcium phosphate. However, particularly in regards to independent claim 21, even if this were inherent, this unrecognized property is no bar to patentability.

Accidental results not intended and not appreciated do not constitute anticipation. *Eibel Processing Co. v. Minnesota and Ontario Paper Co.*, 261 US 45 (1923); *Mycogen Plant Science, Inc. v. Monsanto Co.*, 243 F.3d 1316, 1336, 5 USPQ2d 1030, 1053 (2001). Further, the Federal Circuit stated in *In re Robertson*, that "to establish inherency, extrinsic evidence must make clear that the missing descriptive matter was necessarily present in the thing described in the reference, and would be so recognized by persons with ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a set of circumstances is not sufficient." *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949 (Fed. Cir. 1999).

In the Response to Arguments it is argued that process steps such as pickling/decontamination treatments are not recited in the claims. However, amended independent claim 28 clearly sets forth pickling and decontamination steps. Independent claim 41 also sets forth pickling and decontamination steps.

As a result, the applied art neither teach resorbable emerging calcium phosphate nor teach the process steps by which this material is obtained.

In summary, none of the applied art alone or in combination teach or infer resorbable emerging crystallized calcium phosphate and the unexpected advantages obtained from this material. These unexpected results have been fully documented in the Declaration filed February 24, 2009. It is also submitted that the Declaration is commensurate with the instant claims.

COUGOULIC thus fails to disclose or infer a material provided with resorbable emerging crystallized calcium phosphate, such as is set forth in the independent claims of the present invention.

COUGOULIC accordingly fails to anticipate a claimed embodiment of the present invention. One of ordinary skill and creativity would thus fail to produce a claimed embodiment of the present invention from a knowledge of COUGOULIC and the secondary references. A *prima facie* case of unpatentability has thus not been made.

These rejections are believed to be overcome, and withdrawal thereof is respectfully requested.

CONCLUSION

The rejections are believed to have overcome obviated or rendered moot, and no issues remain. The Examiner is

accordingly respectfully requested to place the application in condition for allowance and to issue a Notice of Allowability.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future submissions, to charge any deficiency or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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